requires, I also order the Plaintiffs to pay the costs of the Third Party.

Claim dismissed.

Solicitors: *Chung & Co., Donaldson & Burkinshaw; Rodyk & Davidson.*

MALAYSIAN REPORTS

SIVA SEGARA v. PUBLIC PROSECUTOR

[F.C. (Abdul Hamid C.J. (Malaya), Mohamed Azmi & Syed Agil Barakbah F.JJ.) April 16, 1984 & May 7, 1984]

[Kuala Lumpur – Federal Court Criminal Reference No. 1 of 1984]

Criminal Law and Procedure – Unlawful Assembly – Whether knowledge and intention are essential ingredients – Whether section 27(5)(a) of the Police Act 1967 should be read with reference to the other provisions of the section – Interpretation – Police Act, 1967, s. 27

In this case the applicant was one of 42 lawyers who were charged with the offence of taking part in a unlawful assembly in a public place for which no licence was obtained, an offence under section 27(5)(a) of the Police Act, 1967. The learned Magistrate recorded the charge as proved but admonished and discharged the accused under section 173A(ii)(a) of the Criminal Procedure Code. An appeal to the High Court was dismissed (See p. 225 *post*). The applicant was given leave to refer the following questions to the Federal Court under section 66 of the Courts of Judicature Act:–

(1) whether knowledge and intention are essential ingredients to be established before a *prima facie* case can be said to have been made out for the finding of guilt under section 27(5)(a) of the Police Act, 1967; and (2) whether section 27(5)(a) of the Police Act, 1967, can be read without any or any proper reference to all the other provisions of section 27 of the Police Act, 1967.

Held: (1) although there is no express reference to knowledge or intention in section 26(a)(a) of the Police Act, 1967, it cannot be said that an assembly, meeting or procession simpliciter which takes place without a licence becomes in law unlawful;

(2) section 27(5)(a) of the Police Act has to be construed with reference to section 27(2) of the Act. Subsection (2) speaks of an assembly, meeting or procession which is intended to be convened collected etc. in other words an assembly, meeting or procession which is intended to be organised. If therefore a person intends to convene or organise an assembly and he in fact takes part in convening or organizing an assembly envisaged by subsection (2) and that assembly does take place without the convener or organiser first obtaining a licence, such assembly is deemed by law to be an unlawful assembly and the convener or organiser commits an offence under subsection 5(a) of section 27 of the Act. Further and in respect of such assembly, that is the assembly which takes place without a licence issued under the provisions of subsection (2), then whoever takes part in such assembly commits an offence under subsection 5(a) of section 27 of the Act;

(3) knowledge on the part of the person who takes part in such assembly becomes an essential ingredient of the offence and the answer to the first question must therefore be in the affirmative;

(4) subsection 5(a) of section 27 has to be read in the light of or with reference to section 27(2) of the Act and therefore the answer to question (2) as it is framed in the negative will be in the negative;

(5) it was a question of fact in this case whether there was an intention to convene or organise an assembly of three or more persons in a public place but on the basis that there was such intention and the assembly did take place then such assembly should in law be deemed to be an unlawful assembly and the person or persons who took part in such assembly could by inference be held to have knowledge that it was an assembly that was convened or organised without a licence being issued under subsection (2); and therefore the person or persons who took part in such assembly would have committed an offence under section 5(a) of section 27 of the Act and also the person or persons who convened or organised such assembly.

Cases referred to:

(1) *Duport Steels Ltd.* v. *Sirs* [1980] 1 All E.R. 529.

(2) *Vacher & Sons Ltd.* v. *London Society of Compositors* [1913] A.C. 107.

(3) *Kamara & Ors.* v. *Director of Public Prosecutions* [1973] 2 All E.R. 1242.

(4) *Public Prosecutor* v. *Ismail bin Ishak* [1976] 1 M.L.J. 183.

FEDERAL COURT.

K. Siva Segara, applicant in person.

Mokhtar Abdullah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Abdul Hamid C.J. (Malaya) (delivering the Judgment of the Court): In April, 1981 a Bill to amend the Societies Act was before Parliament. The proposed amendments generated a lot of public interest and there was much controversy. The Bar Council opposed these amendments. An Extraordinary General Meeting to discuss the issue was convened by the Council to be held on April 4, 1981. On that date there was insufficient quorum. As a result the meeting was adjourned to April 7, 1981. Some 220 lawyers assembled at the Lake Club for the Extraordinary General Meeting. There was still insufficient quorum. Nevertheless the members of the Bar present had some discussion. They decided to appoint a delegation consisting some 10 or 12 members to go to Parliament House to distribute to members of Parliament the cyclostyled copies of the letter and memorandum sent to the Prime Minister.

On the day of the meeting copies of the memorandum were circulated to the members present. The delegation left for Parliament House. They used passes secured earlier to get in. There they distributed copies of the memorandum. Some Members of Parliament refused to accept.

The Bar Council's contention was that the amendments were being done in such a hurry that members of the public did not have adequate time to discuss or present their views on these amendments. The Bar Council was of the view that the amendments would have far-reaching effect and Parliament should therefore delay the passing of these amendments to enable all societies and members of the public to fully present their views. The Bar Council was also of the view that the proposed amendments contravened certain Articles of the Constitution. It was for these reasons that the Bar Council opposed them. These objections were set out in a memorandum that was sent to the Government.

Subsequently a large number of the members of the Bar who had earlier gathered at the Lake Club congregated at the gate of Parliament House. They got there in batches, some on foot while others by cars. It is not clear how many of them exactly collected but on the evidence given by the policemen at the gate, there was a big crowd – something like 100 to 120 people. They stopped the cars passing through the gate to distribute leaflets and booed at those that did not stop. These were briefly the facts upon which the prosecution founded their case. The lawyers were charged under section 27(5)(a) of the Police Act (Act 41 of 1967) (we call the Act). The Magistrate found that they had a *prima facie* case to answer. Their defence was called but they elected to remain silent. The Magistrate recorded the charge as proved. He only admonished and discharged them under section 173A(ii)(a) of the Criminal Procedure Code.

There was an appeal to the High Court. It was heard by Hashim Yeop A. Sani F.J. He dismissed the appeal. An application was made for leave to refer four questions of law of public interest under section 66 of the Courts of Judicature Act. Leave was only allowed in respect of the following questions:

(1) Whether knowledge and intention are essential ingredients to be established before a *prima facie* case can be said to have been made out for the finding of guilt under section 27(5)(a) of the Police Act 1967; and

(2) Whether section 27(5)(a) of the Police Act 1967 can be read without any or any proper

reference to all the other provisions of section 27 of the Police Act 1967.

The applicant is one of the 42 lawyers brought before the Magistrate charged with an offence under section 27(5)(a) of the Act. The charge is that on April 7, 1981 they took part in an unlawful assembly in a public place for which no licence was obtained under that section.

In the appeal against the finding of guilt a number of grounds were raised by the lawyers one of which was on the proper construction to be given to section 27 of the Act. Hashim Yeop A. Sani F.J. exercising appellate jurisdiction of the High Court in a very careful judgment dealt with the general law relating to unlawful assemblies when the Police Act was enacted to ascertain the intention of the legislature in enacting section 27 of the Act. He then asked himself the following question:

"Who may be charged under section 27(5) of the Police Act and what are the ingredients required to be proved?"

Before proceeding to construe the section, the learned Judge observed that: "the interpretation must be such that it must meet the legislative purpose of the enactment (See *Duport Steels Ltd.* v. *Sirs*[1])." And that in the interpretation of a Statute its language must be read in what seems to be its natural sense – *Vacher & Sons Ltd.* v. *London Society of Compositors.*[2] The learned Judge also observed that:

"The court as guardian of the rights and liberties enshrined in the Constitution is always jealous of any attempt to tamper with rights and liberties ..... the right in issue here i.e. the right to assemble peaceably without arms is not absolute for the Constitution allows Parliament to impose by law such restrictions as it deems necessary in the interests of security and public order ... what the court must ensure is only that any such restrictions may not amount to a total prohibition of the basic right so as to nullify or render meaningless the right guaranteed by the Constitution."

We respectfully agree with the views expressed by the learned Judge.

As regards the general law relating to unlawful assembly when the Police Act was enacted, the Criminal Procedure Code Chapter VIII sections 84 to 87 inclusive were deleted and substituted therefor by a new section 84 which provides for forcible dispersal of unlawful assemblies. Section 83 provides that a Magistrate, gazetted police officer not below the rank of Inspector or officer in charge of a police station may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse, and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

The other law which relates to unlawful assemblies is to be found in the Penal Code Chapter VIII under the heading "Of offences against public tranquillity ...". To constitute an unlawful assembly under section 141 of the Penal Code there must be five or more persons. The common object of the persons composing that assembly must be one of these set out thereunder all of which contain criminal elements.

One other provision on the subject is contained in the Public Order (Preservation) Ordinance 1958, an Ordinance relating to maintenance and restoration of public order. Section 5 of the Ordinance deals with prohibition and dispersal of assemblies. And finally there was section 39 of the Police Ordinance 1952 which has now been repealed (new Act 41 of 1967). Section 39 is replaced by section 27 of the Act.

The Police Act 1967 is an Act aimed at consolidating and amending the law relating to the organization, discipline, powers and duties of the Royal Malaysia Police and to provide for matters incidental thereto. It has repealed the whole of the Police Ordinance 1952 (section 98 and the Third Schedule of the Act).

These provisions clearly show that an unlawful assembly under the Criminal Procedure Code, the Penal Code and the Public Order (Preservation) Ordinance 1958 relates to an assembly that comprises of five or more persons while that under the Police Act of three or more.

We now turn to the questions referred for our determination.

Whether knowledge and intention are essential ingredients: In answering this question, we would confine ourselves solely to the offence or offences that come within the scope of section 27(5)(a) of the Act. The learned Judge expressed the view that: "Four important features need to be observed in the legislation." We refer only to two of them, those which we think are relevant to the determination of this question:

(1) One feature under the Penal Code which is central throughout the chapter is knowledge and intention. *There is no expressed reference to knowledge or intention in section 39(5) of the Police Ordinance 1952 or section 27(5) of the Police Act 1967.*

(2) Both sub-sections in the Police Ordinance 1952 and the Police Act 1967 carry the same *deeming* provision that an assembly, meeting or procession without a licence shall be deemed to be an unlawful assembly, meeting or processsion.

The learned Judge then concluded by saying:

"Therefore the situation under section 39(5) of the 1967 Police Act would seem to be that *an assembly, meeting or procession which takes place without a licence becomes unlawful and all persons who take part in such an assembly* can be convicted under that sub-section."

(Emphasis ours)

He went on to say that section 27(5) should not be read in isolation but should be read in the context of all the provisions carried under section 27. He referred to the argument that was advanced before him that the assembly envisaged by section 27(5)(a) should be an assembly that was "convened" in view of the words "licence issued under the provisions of sub-section (2)" used in that subsection and that consequently that sub-section must be related back to section 27(2). The contention was that sub-section 5(a) should be restricted to an assembly, meeting or procession which is somehow organised by some person or persons. The learned Judge felt that the approach to the construction of that sub-section is reading too much into it. He concluded by saying "what that sub-section means is simply that an assembly, meeting or procession which takes place without a licence should be deemed to be an unlawful assembly. I do not think there can be any clearer language than that."

After careful consideration of the views expressed by the learned Judge and his conclusion we accept that there was no expressed reference to knowledge or intention in section 27(5)(a) of the Act, however we are unable to say that an assembly, meeting or procession simpliciter which takes place without a licence becomes in law unlawful.

It is a well-known principle of construction of statute that the intention of Parliament must be determined from the words used and in construing the words used, it is sometimes necessary to construe the meaning of the words, not by bare reading of the words themselves but by looking also at the rest of the words in the section. For this reason we consider it necessary to embark on a brief analysis of the scope of section 27 of the Act.

Sub-section (1) of section 27 of the Act confers power upon an officer in charge of a Police District or any senior police officer duly authorised in writing to direct the conduct of all assemblies in public places. They are also given the power, as they see fit, to prescribe and regulate the manner in which such assemblies, meetings, etc., should be conducted. The power conferred upon such officers are clearly general in nature. Sub-section (2) of section 27 of the Act is more specific. It makes it mandatory upon any person or persons intending to convene, or collect any assembly, meeting, etc., in a public place to apply to the Officer in Charge of a Police District and the Officer in Charge of the Police District may issue a licence if he is satisfied that the assembly, meeting, etc., is not likely to be prejudicial to the interest of the security of the Federation or any part thereof or to excite disturbance of the peace. The proviso to subsection (2) of section 27 of the Act further confers power on the Officer in Charge of a Police District to cancel any licence issued under the sub-section.

What we think is significant to note here is that the underlying object clearly is to uphold public order and to protect the public generally against lawlessness and disorder. In this regard the position seems to be similar to that under the common law (see *Kamara and Others* v. *Director of Public Prosecutions*[3]).

Now under sub-section (3) of section 27 the power is given to a police officer, defined to mean any member of the Royal Malaysia Police, to stop any assembly, meeting, etc.: (a) in respect of which a licence has not been issued, or having been issued was subsequently cancelled under sub-section (2), or (b) which contravenes any of the conditions of a licence issued in respect thereof under that sub-section.

Sub-section (3) further confers power upon police officers to order the persons comprising any such assemblies, meetings, etc., to disperse.

Sub-section (4) of section 27 of the Act

makes it an offence for disobedience to any order given under subsection (1) or (3) or for contravening a licence issued under sub-section (2).

We would observe that an assembly is not defined under section 27 of the Act. However, in the light of sub-section (5)(b) it seems clear that an assembly envisaged under section 27 must be an assembly which comprised three or more persons.

Sub-section (5) of section 27 of the Act is a deeming provision. Apart from that it also makes it an offence (i) for all persons taking part in such an unlawful assembly, meeting, etc., and (ii) in the case of an assembly, meeting, etc., for which no licence has been issued, for all persons taking part in convening, collecting or directing such assembly, meeting, etc. As can be seen, reference to all persons taking part in such assembly in (i) above would apply to both paragraphs (a) and (b) of subsection (5) of section 27 whilst the second limb i.e. (ii) above is specifically directed to person or persons who take part in convening, collecting an assembly, meeting, etc.

Clearly therefore under sub-section (5)(a) itself, there are two separate offences, applicable to two categories of person or persons namely, (a) all persons taking part in such assembly and (b) all persons taking part in convening, collecting, etc., such assembly.

The first category, that is, those taking part in the assembly, must relate specifically to an assembly, meeting or procession which takes place without a licence issued under the provisions of subsection (2). The necessary question that calls for determination is what assembly requires a licence under that sub-section. It is, to this effect and in answer to this question that we form the view that sub-section (5)(a) has to be construed with reference to sub-section (2). Sub-section (2) speaks of an assembly, meeting or procession which is intended to be convened, collected, etc., in other words, an assembly, meeting or procession which is intended to be organized. It is in this respect that in our view the element of intention becomes a necessary element. In the first place, it applies to the convenor or organizer. If therefore a person intends to convene or organize an assembly and he in fact takes part in convening or organizing an assembly envisaged by this sub-section and that assembly does take place without the convenor or organizer first obtaining a licence, such assembly is deemed by law to be an unlawful assembly and the convenor or organizer commits an offence under subsection (5)(a) of section 27. Further we form the view and it is in respect of such assembly, that is, the assembly which takes place without a licence issued under the provisions of sub-section (2), that whoever takes part in such an assembly commits an offence under subsection (5)(a). That being the case, knowledge on the part of the person who takes part in such an assembly becomes the essential ingredient of the offence. It is to be observed that both categories of offences apply to those "taking part" in other words, "participation".

The learned Judge expressed the view that: "it is a matter of evidence whether the trial court is of the view that there is participation. For this purpose the trial court is entitled to look at the evidence as a whole. In short, it is a question of fact whether there is participation."

We fully agree but would hasten to add that while participation is a question of fact, conceivably, in the case of (a) there must necessarily be an element of knowledge and (b) an element of intention. The operative words under sub-section (5) are "taking part". In this regard we approve that part of the judgment in *Public Prosecutor* v. *Ismail bin Ishak*[4] where it was held that there is a distinction between "taking part" in the Police Act and "being a member of or is found at an unlawful assembly" under the Penal Code. The knowledge we refer to here is the knowledge that a person has that he is taking part in a public place in an assembly, meeting, etc., that is being convened or organized without a licence.

To this effect we are of the opinion that the construction to be placed upon sub-section (5)(a) of section 27, shall have to be read in the light of or with reference to section 27(2).

We are also of the opinion that it is not the intention of Parliament that a gathering or an assemblage of persons in a public place shall become an unlawful gathering or assembly. An assembly in a public place brought about by a spontaneous collection, gathering or assemblage of persons does not necessarily come within the scope of subsection (5)(a) of section 27. The mere gathering or assemblage in insufficient to attract the deeming provision to be invoked. Such an assembly cannot by law be deemed to be unlawful. In view of what we have stated above question (2) is

already answered. Our answers to these questions are: in respect of (1) in the affirmative and in respect of (2) in the negative.

It is also important for us to state that fundamentally knowledge or intention, as the case may be, is strictly a question of fact. Knowledge or intention therefore may be inferred from the circumstances surrounding each particular case.

At the hearing of this reference, Mr. Siva Segara who appeared in person urged upon us to review the facts. We have indicated that the facts of the particular case do not warrant such an exercise. It is clearly revealed that an Extroardinary General Meeting was convened by the Bar Council with a specific purpose, namely, to discuss their objections to the proposed amendments. The gathering decided to send a delegation to Parliament House to distribute copies of the memorandum to Members of Parliament. A large number of members of the Bar who gathered at the Lake Club collected at the gate of Parliament House. Some wore black bands – a sign of mourning. At the gate they stopped cars and distribute leaflets and some booed at the cars that did not stop. It is our view that although there was no direct evidence that those who convened the Extraordinary General Meeting were the persons who convened or organized an assembly of their members at the gate, there was nonetheless ample evidence for an inference to be drawn that the assemblage of the members at the gate was initiated or organized by one or more of their members. The inference can be drawn from the circumstances surrounding this case, in particular, the composition of the assembly, the manner in which they assembled, their conduct prior to and during the assembly and the purpose for which they had assembled. These are some of the relevant factors that should be taken into account to determine knowledge or intention as the case may be. In the final analysis it is our view that knowledge or intention, need not have been formed during the meeting at the Lake Club but could have been formed at any time. It could have been formed before the members departed from the Lake Club or even in the course of their journey to the gate. The convenors or the organizers could well have been one or more of the members of the Bar who remained behind after the delegation had left for Parliament House. We reiterate that this is essentially a question of fact and such being the case the determination of such a question shall depend on the merits of each case. On the basis that there was intention to convene or organize an assembly of three or more persons in a public place and an assembly did take place then such assembly should in law be deemed to be an unlawful assembly and the person or persons who took part in such assembly could by inference be held to have had knowledge that it was an assembly that was convened or organized without a licence being issued under sub-section (2). And therefore the person or persons who took part in such assembly would have committed an offence under sub-section (5)(a) of section 27 and also the person or persons who convened or organized such assembly.

Finally we repeat that the answer to question (1) is in the affirmative while the answer to question (2), as it is framed in the negative, will be negative.

Questions answered accordingly.

Solicitors: *Siva Segara & Co.*

SADIT TIMBER SDN. BHD. & ANOR. v. THE "LING YUNG" AND "THAI YUNG", OWNERS & ORS.

[O.C.J. (Chong Yik Liong J.) December 7, 1982]
[Kuching — Admiralty Action in Rem No. KG. 4 of 1980]

Practice and Procedure — Admiralty — Application to substitute undertaking given to secure release of ship — Whether court has jurisdiction to effect substitution of undertaking — R.H.C. 1980, O. 70 r. 15 — R.S.C. (UK), O. 75, r. 16.

Shipping Law — Admiralty in rem — Application to substitute security given for release of ship — When security can be varied or substituted.

In an action *in rem*, the plaintiffs arrested the ship "Thai Yung" belonging to the defendants. To secure its release, the defendants caused the Hongkong and Shanghai Banking Corporation to give the plaintiffs security by way of an undertaking, *inter alia*, to deposit forthwith M$1.7m with the High Court in Borneo (Kuching Registry) to abide by the order of the High Court in respect of the plaintiffs' claim in the said action. The defendants subsequently applied by way of Summons-in-Chambers for an order to substitute the original undertaking on the grounds that the proposed new undertaking would afford sufficient security to the plaintiffs and that the obligation to immobilise M$1.7m of the defendants' assets was onerous especially where the plaintiffs have not established the defendants' liability in the action.

Held, dismissing the application: (1) the proposed new undertaking could not constitute security as first, in lieu of the actual deposit of M$1.7m, only a guarantee was offered and second, the guarantee would in effect be given for a past consideration viz. to secure the release of a ship which release had been obtained two years ago;